

DOCKET FILE COPY ORIGINAL

02-278



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

OCT 9 2003

Control No. 0302776/aw

The Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington, D.C. 20510-3602

RECEIVED

OCT 10 2003

Federal Communications Commission
Office of the Secretary

Dear Senator Nickles:

Thank you for your letter on behalf of your constituent, Ms. Danielle Holmes, Executive Director, Tulsa Apartment Association, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Ms. Holmes expresses concern that, "without the proper input from the business and association community," the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Ms. Holmes indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

No. of Copies rec'd 2
List ABCDE

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Ms. Holmes' comments. We have placed a copy of Ms. Holmes' correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,


K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

DON NICKLES
OKLAHOMA

United States Senate
WASHINGTON, DC 20510-3602

COMMITTEES
BUDGET, CHAIRMAN
FINANCE
ENERGY AND NATURAL
RESOURCES
RULES AND ADMINISTRATION

*OGP
TCHP Policy
2774*

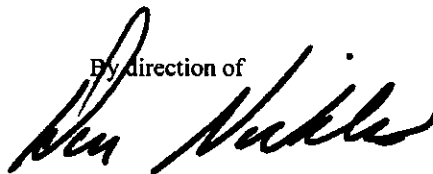
September 16, 2003

Respectfully referred to

Federal Communications Commission

for such consideration as the communication herewith submitted may warrant, and for a report thereon, in duplicate to accompany return of enclosure.

By direction of



DON NICKLES
U.S. Senator

Please reply to Heather Reilly of my staff.

23 SEP 2003 RCVD

100 NORTH BROADWAY
SUITE 1820
OKLAHOMA CITY, OK 73102
(405) 231-4941

3310 MID-CONTINENT TOWER
401 SOUTH BOSTON
TULSA, OK 74103-4007
(918) 581-7651

711 SW D AVENUE
SUITE 202
LAWTON, OK 73501
(580) 357-9878

1914 LAKE ROAD
PONCA CITY, OK 74604
(580) 767-1270

**TULSA APARTMENT ASSOCIATION**

6855 South Canton
Tulsa, Oklahoma 74136
(918) 747-6217
FAX (918) 747-6244

Federal Communications Commission

July 31, 2003

Senator Don Nickles
133 Hart Building
Washington, DC 20510

Dear Senator Nickles:

I am writing to alert you to the recent actions taken by the FCC to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). The FCC has decided, without the proper input from the business and association community, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements. This amendment will place onerous administrative and economic burdens on associations by requiring "expressed written consent" from their own members prior to sending a fax advertisement. I hope you share in my concern over this onerous restriction of legitimate commercial activity.

The new FCC reading of the TCPA prohibits any person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or services which is transmitted to any person without that person's prior express invitation or permission." As a result, the established business relationship is no longer sufficient to permit faxes to be transmitted. Associations and businesses are now faced with the challenging administrative, legal, economic and record keeping ramifications that will arise thanks to the new FCC changes.

The proposed changes, which are scheduled to go into effect on August 25, 2003 -- 30 days after they were published in the Federal Register on July 25, 2003 -- will create a significant economic and labor-intensive burden for the association community. The adjustment in the TCPA will require signed written consent to allow faxes to be sent that contain unsolicited advertisements. It would even require written consent for faxes pertaining to events such as annual meetings.

While these changes may be suitable for residential telephone numbers as the new Do Not Call registry provides, they are certainly not acceptable for association-to-member facsimile communications. Associations rely on faxes as a prime source of communication and marketing to meet the needs of their members.

With penalties reaching \$11,000 per unauthorized fax, this is a burden that few associations can financially endure. The proposed FCC changes are a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits. Please join me in requesting that the FCC halt their efforts to change the current TCPA.

Sincerely,

Danielle Holmes
Executive Director
Tulsa Apartment Association

07/31/2003 10:49AM